

AUG 11 2009

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF  
APPLICATION OF LICENSE FOR  
BRIAN T. CAVANAUGH.

) FINDINGS OF FACT, CONCLUSIONS  
) OF LAW, RECOMMENDED ORDER  
) AND ORDER

) CAUSE NO. A-1834  
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This matter came on for hearing on the 23rd day of July, 2009, before Martin W. Swanson, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Janette L. Adair. Brian T. Cavanaugh ("Applicant") was present but was not represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Applicant was previously licensed as a resident insurance producer. However, that license was revoked due to a failure to pay a fine stemming from a consent order, specifically A-1718. The aforementioned case was filed on April 4, 2007. Applicant agreed to pay a \$500 fine within thirty days after the Director of Insurance or their designee signed the consent order. The order was approved by then Director Wagner on May 10, 2007. The fine was not paid in thirty days per the consent order, but it was paid on October 30, 2008. Prior to the

payment, a motion to revoke the license was filed June 18, 2007 by the Department. Director Wagner ordered the revocation of said license on June 21, 2007. E5.

2. Applicant, on or about May 28, 2009, applied for an insurance producer license. Within the application, Applicant admitted that he had been convicted of driving under the influence and was sentenced to probation. Applicant also admitted to being involved in an administrative action that he believed to be in 2006. Applicant also admitted that he owed the federal government and the state of Nebraska back taxes. Further, Applicant admitted that he was arrears on his child support payments. E1.

3. Applicant's request for a license was denied by the Department on or about June 3, 2009, pursuant to Neb. Rev. Stat. §44-4059(1)(b) and 44-4059(1)(i). Applicant requested a hearing to have the denial reconsidered. E3.

4. During the course of the hearing, Applicant was asked and agreed that he had a previous conviction for a domestic assault. Although Applicant did not fully admit to the conviction in his testimony at the hearing, he did admit that he went to jail for sixty days. The Nebraska Standardized Substance Abuse Evaluation form, which is attached to his application, denotes this particular conviction as well. Applicant did not disclose this conviction on his application, and believed that he was only required to report those convictions from five years prior to the date of application. The Uniform Application for Individual Insurance Producer License form does not limit the look-back period. E1.

5. Applicant did not disclose another administrative action, specifically Cause No. A-1015, wherein Applicant was found to have violated the insurance code and was fined \$400. E1,

6.

6. Applicant testified that he assisted with an application for insurance, although he also claimed he did not fill it out for the potential insured. Based upon the evidence presented, Applicant aided, in some fashion, an application for insurance when he did not have an insurance producer's license.

7. Applicant owes taxes to the federal and state government, and still owes child support.

8. Applicant is a recovering alcoholic and attends AA meetings regularly.

9. Applicant testified that he needed his license in order to get his career back on track, and so he could pay the balances owed to the state and federal government.

10. If granted a license, Applicant stated that he would sell life and annuity products.

11. Richard Reed ("Reed") testified on behalf of Applicant, and stated that Applicant and he had known each other for thirty years and that Applicant had gone through a bad divorce and some tough times. Reed also stated that Applicant was living with him and that he was attempting to help Applicant.

12. Jim Gray ("Gray"), an insurance producer, also testified that he had worked with Applicant for ten years prior to each of them starting up their own agencies. Gray believed that Applicant was a competent agent and did a good job for his clients when they worked together in the 1980's.

### DISCUSSION

Although Applicant is attempting to straighten his life out, there are too many issues that cannot be ignored. In the not so recent past, Applicant has had two administrative actions taken against him, with one of them leading to revocation due to his failure to comply with an order of the Director. In the present, Applicant failed to provide accurate information on his application by failing to disclose all criminal convictions and all administrative actions. Moreover, Applicant assisted with an application for insurance when his license had been revoked. Under the law, a person may not solicit, sell, or negotiate insurance in this state without a license. Applicant did this in violation of the law. Additionally, Applicant has failed to pay child support and taxes, both

sufficient reasons for the denial of his license and, should a license be granted, would require immediate suspension of the license. Based upon all of the foregoing, I cannot recommend the granting of an insurance producer's license.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Harris to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4001 et seq.
2. The Department has personal jurisdiction over Applicant.

#### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, the following is recommended for adoption by the Director of Insurance:

1. Brian T. Cavanaugh Insurance Producer's License application for an insurance producer's license should be denied.
2. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter.

Dated this 6<sup>th</sup> day of August, 2009.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



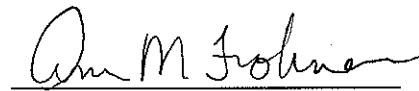
Martin W. Swanson  
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of The Denial of Application for License for Brian T. Applicant, Cause No. A-1834.

Dated this 11<sup>th</sup> day of August, 2009.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



Ann M. Frohman  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant by mailing a copy to Brian T. Cavanaugh at 11217 Washington Street, Omaha, NE 68137, by certified mail, return receipt requested, on this 11<sup>th</sup> day of ~~July~~, 2009.

*august,*

